MONTANA LEGISLATIVE HISTORY

Chapter 581 19 83

Bill H _____ S 391 Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 14	✓ C	Hearing Date(s)	Feb 14	✓ C
	Mar 22	✓ C		Feb 15	✓ C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Mar 23	✓ C		Feb 15	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

... AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

INTRODUCED: 02/09/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/09/83
HEARING: 2/14/83
REPORT: 02/14/83, DO PASS
2ND READING: 2/16/83 AYES: 50; NAYS: 0
3RD READING: 02/19/83 AYES: 48; NAYS: 0

TRANSMITTED TO HOUSE: 02/19/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 02/28/83
HEARING: 3/10/83
REPORT: 03/11/83, BE CONCURRED IN
2ND READING: 03/14/83, BE NOT CONCURRED IN AYES: 57; NAYS: 40
BILL KILLED

SB 390 -- BOYLAN, DANIELS, GRAHAM, ET AL. -- REMOVING THE MONTANA STATE PRISON FROM CONTROL OF THE DEPARTMENT OF INSTITUTIONS AND ATTACHING IT TO THE DEPARTMENT OF ADMINISTRATION FOR ADMINISTRATIVE PURPOSES ONLY; ... AND PROVIDING AN EFFECTIVE DATE.

INTRODUCED: 02/10/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 02/10/83
HEARING: 2/14/83
REPORT: 2/15/83, DO PASS
2ND READING: 02/17/83 AYES: 28; NAYS: 21
3RD READING: 02/19/83 AYES: 25; NAYS: 25, FAILED
ON MOTION, 2/21/83, THAT THE BILL BE PLACED ON 2ND READING. MOTION PASSED BY THE FOLLOWING VOTE: AYES: 23; NAYS: 22.
2ND READING: 02/22/83 AYES: 27; NAYS: 21
3RD READING: 02/23/83 AYES: 27; NAYS: 21

TRANSMITTED TO HOUSE: 02/23/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 02/28/83
HEARING: 3/7/83
REPORT: 03/23/83, BE NOT CONCURRED IN
BILL KILLED: 03/25/83

SB 391 -- ECK, HALLIGAN, VAN VALKENBURG -- TO GENERALLY REVISE CRIMINAL PENALTIES; ... AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

INTRODUCED: 02/10/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/10/83
HEARING: 2/14/83
REPORT: 2/16/83, DO PASS, AS AMENDED
2ND READING: 02/18/83 AYES: 48; NAYS: 0
3RD READING: 02/21/83 AYES: 50; NAYS: 0

TRANSMITTED TO HOUSE: 02/21/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/28/83
HEARING: 3/14/83
REPORT: 03/24/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/26/83, BE CONCURRED IN AYES: 57; NAYS: 15
3RD READING: 03/28/83, BE CONCURRED IN AYES: 85; NAYS: 13

RETURNED TO SENATE WITH AMENDMENTS: 03/28/83
2ND READING: 04/06/83 AYES: 46; NAYS: 2
3RD READING: 04/07/83 AYES: 47; NAYS: 3

TRANSMITTED TO GOVERNOR: 04/14/83
SIGNED: 04/19/83, CHAPTER 581

SB 392 -- ELLIOTT, GAGE -- TO GENERALLY REVISE AND CLARIFY THE LICENSING LAWS FOR CERTIFIED PUBLIC ACCOUNTANTS ....
BY REQUEST OF: THE BOARD OF PUBLIC ACCOUNTANTS

INTRODUCED: 02/10/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 02/10/83
HEARING: 2/14/83
REPORT: 2/15/83, DO PASS, AS AMENDED
2ND READING: 02/17/83 AYES: 43; NAYS: 1
3RD READING: 02/19/83 AYES: 46; NAYS: 1

TRANSMITTED TO HOUSE: 02/19/83
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 02/28/83
HEARING: 3/10/83
REPORT: 03/11/83, BE CONCURRED IN
2ND READING: 03/19/83, BE CONCURRED IN AYES: 77; NAYS: 4
3RD READING: 03/21/83, BE CONCURRED IN AYES: 91; NAYS: 5

RETURNED TO SENATE: 3/21/83

TRANSMITTED TO GOVERNOR: 03/28/83
SIGNED: 4/2/83, CHAPTER 335

SB 393 -- DANIELS -- PROVIDING FOR THE MANDATORY EXECUTION OF HABITUAL CRIMINALS.

INTRODUCED: 02/10/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/10/83
HEARING: 2/17/83
DIED IN COMMITTEE

SB 394 -- BOB BROWN, HALLIGAN, FULLER, ET AL. -- ALLOWING A DEFENDANT SENTENCED TO DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL INJECTION ....

INTRODUCED: 02/10/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/10/83
HEARING: 2/15/83
REPORT: 2/16/83, DO PASS, AS AMENDED
2ND READING: 02/19/83 AYES: 34; NAYS: 6
3RD READING: 02/22/83 AYES: 39; NAYS: 9

TRANSMITTED TO HOUSE: 02/22/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/28/83
HEARING: 3/16/83
REPORT: 03/21/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/22/83, BE CONCURRED IN AYES: 68; NAYS: 5
3RD READING: 03/23/83, BE CONCURRED IN AYES: 81; NAYS: 12

RETURNED TO SENATE WITH AMENDMENTS: 3/24/83
2ND READING: 03/30/83 AYES: 32; NAYS: 9
3RD READING: 03/31/83 AYES: 43; NAYS: 6

TRANSMITTED TO GOVERNOR: 04/06/83
SIGNED: 4/9/83, CHAPTER 411

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 14, 1983

The twenty-seventh meeting of the Senate Judiciary Committee was called to order by Vice-Chairman Bruce D. Crippen on February 14, 1983 at 10:10 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present, except for Senator Daniels who was excused.

CONSIDERATION OF SENATE BILL 385: Senator Stimatz advised that he was sponsoring this bill at the request of the Department of Justice. The purpose is to require the keeping of reports of stolen and recovered vehicles in a state automated stolen vehicle file which would be maintained by the Department of Justice and accessed by proper officials of the state. An inspection of the vehicle identification number prior to the issuance of a certificate of ownership would be required under this bill. The Department of Justice hopes to get a handle on stolen vehicles by implementing this inspection program.

PROPONENTS: Larry Majerus, representing the Motor Vehicle Division of the Department of Justice, reviewed the bill by sections and explained their effects. This system will allow Montana to be more in line with other states in locating stolen vehicles and it would also allow the Department to charge a fee for the cost of inspection.

Bud Schoen, Chief Registrar of the Motor Vehicle Division, agreed with Larry Magerus' review of the bill. He then cited statistics regarding thefts of motor vehicles (Exhibit "A"), and urged the passing of SB385.

Colonel Robert Landon of the Highway Patrol Division supported the need for an inspection program in Montana.

There being no further proponents, no opponents and no questions from the Committee, Senator Stimatz closed by urging the passing of this bill so that Montana will not continue to be a laundering state for stolen vehicles and reiterated that the costs of this program will be recovered by charging for the inspection.

CONSIDERATION OF SENATE BILL 391: Senator Eck advised that she is sponsoring this bill at the suggestion of McKinley Anderson, an attorney from Bozeman. SB391 would essentially do three

things: (1) increase the length of time district courts can impose suspended and deferred sentences upon a defendant; (2) provide for reimbursement to the county for costs of confinement; and (3) require the imposition of restitution in all cases in which the defendant can pay the same. Under the provisions of this bill, the jurisdictional amount for a felony would be changed from $150 to $500 in certain cases.

PROPONENTS: McKinley Anderson, the attorney from Bozeman who suggested the idea of this bill, advised that because of the rapid rate of inflation there is a need to raise the felony $150 amount to $500. Examples of cases he has handled in Bozeman as a public defender were explained. He supported the need to raise the jail time which could be imposed as a condition of a suspended or deferred sentence from 90 days to 180 days as he felt this would help to keep the defendant under control. The provision which requires the defendant to reimburse the county for his confinement would cover the expense for raising the confinement time.

Mike Salvagni, former public defendant for Gallatin County and the current County Attorney, stated that raising of the jurisdictional amount is appropriate. He advised that jail time is usually given in the case of deferred impositions and there is a need for more leverage in district courts for time. He felt that additional jail time would be appropriate.

John Maynard, Assistant Attorney General, advised that the Attorney General's Office endorses the raising of the amount which constitutes a felony. His offices feels that this will relieve some of the burden on district courts.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Halligan review the bill with Senator Eck and compared it to his restitution bill, SB237. Senator Eck is hopeful that the two bills could be meshed together to create an ideal restitution bill. Senator Halligan suggested amending page 19, line 14 of SB391 to add "beyond 90 days" after "person." He felt this would require the state to pay back the costs of the defendant's confinement.

Senator Mazurek assessed the bill as requiring restitution but also providing exceptions. He didn't see any need to add this type of language to the statutes.

There being no further questions, Senator Eck closed by stating the Supreme Court has suggested that the legislature establish guidelines for restitution. Restitution is now permissive, but she felt it would not be unconstitutional to require it. She then urged the Committee to at least consider the portion of

the bill which increases the jurisdictional limits so as to take the load off the district courts.

CONSIDERATION OF SENATE BILL 261: Senator Halligan referred the Committee to the "grey" copy of this bill. It had originally been introduced in Business and Industry; however, many revisions were needed so it was revised and re-referred to Judiciary. The purpose of SB261 is to require all consumer contracts to be written in a clear and coherent language. This law would become effective July 1, 1985 so as to give some time to those who must amend their contracts to conform to this bill. The bill sets out the requirements for plain language and establishes tests for determining whether the contract adhered to the plain language requirement. Senator Halligan displayed examples of contracts which currently comply with the plain language rules.

PROPONENTS: Wade Wilkison, representing the Low Income Senior Citizen Advocates, supported SB261 as it is important to the senior citizens to be able to interpret contracts without legal counsel. He urged the Committee to consider this bill.

Stacy Flaherty, representing the Women's Lobbyist Fund, strongly supported the need for clear and coherent language in contracts.

There being no further proponents, the hearing was opened to the opponents of SB261.

OPPONENTS: Jeff Kirkland, representing the Montana Credit Unions League, advised that he stands in "qualified opposition" to this bill. Mr. Kirkland said he supported the concept of clear and coherent contracts; however, he is unaware of any problems with current contracts which would warrant this type of legislation. He stated that if this bill is not being introduced to correct an existing problem, then he is opposed to it. He also felt that there were some areas which needed clarification, specifically the definition of consumer and consumer contract. He questioned if a security agreement would be considered a consumer contract and was concerned with the two tests for determining if a contract is in plain language as he could not see which test would be controlling.

John Cadby, representing Montana Bankers Association, voiced his appreciation for Senator Halligans' revisions, but was also concerned that the bill as written discriminates against private venders. He also failed to see why it is necessary to legislate plain language contracts since the nation is moving in this direction on its own. John Cadby expressed confusion with the language on page 9, lines 12 and 13 which provide that a contract is enforceable even though it violates the act. He suggested passing a resolution rather than a law if there is a need for this type of language.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983 Date 2-14-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)			✓
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

was taken on Senator Crippen's do pass motion. A tie vote was recorded. Senator Crippen then moved to TABLE SB313. A roll-call vote was taken and this motion carried with Senators Halligan and Mazurek voting in opposition.

ACTION ON SENATE BILL 351: The bill, as previously amended, was ready for consideration by the Committee. Senator Mazurek moved SB351 DO PASS AS AMENDED. This motion carried with Senator Daniels voting in opposition.

ACTION ON SENATE BILL 354: The Committee discussed how SB354 gives priority to agisters' liens through many examples. The consensus was that there would not be a problem with small repairs, but larger amounts could be dangerous. Senator Berg suggested inserting a dollar limit. Concern arose with subsection (2) and the wording "30 days after payment is due." The Committee agreed that the language deleted from page 1, lines 14 and 15 should be reinserted. Various suggestions were given for the time period for notice. Senator Crippen moved to reinsert the original language on page 1, lines 14 and 15 and to increase the current 10 day provision to 30 days. This motion passed unanimously. The Committee felt the saving clause was appropriate it now reads. Senator Mazurek moved SB354 DO PASS AS AMENDED. This motion carried unanimously.

ACTION ON SENATE BILL 373: The Committee agreed that SB373 is a good relief bill for title insurance companies. Senator Mazurek moved SB373 DO PASS. This motion carried unanimously.

ACTION ON SENATE BILL 371: The intent of SB371 was discussed. It would allow a 14-year-old child to express their desires as to which parent they are placed with. It was agreed that a judge would not be bound by this provision. Senator Mazurek moved SB371 DO PASS. This motion carried with Senator Daniels voting in opposition.

ACTION ON SENATE BILL 381: The Committee discussed the need to refer to "a grandparent" so that all grandparents of a child could be granted visitation rights, rather than "one or both grandparents" as stated in the bill. Senator Hazelbaker moved to amend the bill to refer to "a grandparent." This motion passed unanimously. Senator Brown then moved SB381 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 386: Senator Mazurek moved SB386 DO PASS. This motion carried unanimously.

ACTION ON SENATE BILL 391: It was agreed that there is a need to raise the felony threshhold from $150 to $500 to provide for inflation and to ease the burden on district courts. The Committee felt the remainder of the bill was unnecessary. Senator Crippen moved to amend SB391 by retaining everything through section 6 and deleting

section 9 through 20 in their entirety. He also moved to provide for an immediate effective date and to reflect all these changes in the title accordingly. This motion passed unanimously. Senator Brown then moved SB391 DO PASS AS AMENDED. This motion also passed unanimously.

The Committee agreed that all future amendments to bills should reflect these changes in the title automatically.

FURTHER CONSIDERATION OF SENATE BILL 388: SB388 was referred to counsel for amending to delete the commission's authority to act upon its own motion.

ACTION ON SENATE BILL 394: The Committee felt that appeals on the basis of cruel and unusual punishment would be eliminated by the enactment of this bill. Senator Brown stated that John Maynard's suggestion to amend SB394 to become retroactive was advisable. He then moved to amend the bill to provide for a retroactive effective date. This motion passed unanimously. Senator Brown further moved that SB394 DO PASS AS AMENDED. This motion also passed unanimously.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 12:00.

JEAN A. TURNAGE
Chairman, Judiciary Committee

February 15, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 391

Eck

Respectfully report as follows: That Senate Bill No. 391

introduced bill, be amended as follows:

1. Title, line 7.
   Following: "INCREASED"
   Strike: remainder of line 7 through "COUNTIES" on line 11.

2. Title, line 13.
   Strike: "46-8-112, 46-8-113, AND 46-18-201,"

3. Title, line 13.
   Following: "MCA;"
   Strike: remainder of line 13 through "MCA;" on line 14.

Continued on Page 2

And, as so amended,

DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

TOM A. HIRSACK

4. Title, line 14.
Following: "AN"
Insert: "IMMEDIATE"

5. Page 11, line 22.
Strike: Sections 9 through 19 in their entirety.
Renumber: subsequent sections.

6. Page 21, line 20.
Strike: "July 1, 1983"
Insert: "upon passage and approval"

And, as so amended,

DO PASS

Chairman.

MINUTES OF THE JUDICIARY COMMITTEE
March 14, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown in room 224A of the Capitol building, Helena, Montana at 8:32 a.m. All members were present as was Brenda Desmond, Staff Attorney for the Legislative Council.

SENATE BILL 391

SENATOR ECK, District 39, explained that this bill was suggested by a local attorney, Mr. Anderson; and that, in the amended form, it merely extends what is considered a misdemeanor in crimes involving property. Under present law, a crime involving property in excess of $150 is a felony. This bill raises that limit to $500, which means cases involving criminal misuse, theft, failure to return rented or leased preperty and issuances of bad checks and a few other things, if the amount involved is less than $500 would be considered misdemeanors and tried in justice court. She stated that this could make a significant impact on our court system as they felt that half or more of the cases would be tried in justice court rather than district court.

She indicated that there are several provisions that she would like them to consider reinserting that the Senate Judiciary had struck out when they intended to strike the restitution language. She thought that the major one is the provision that in a case of a deferred imposition of sentence, the judge could assign a person to the county jail for up to 180 days rather than the present 90-day limitation. She commented that this would provide a little flexibility at the early end of sentencing: and the judge could have someone stay in jail nights and weekends, while still maintaining his job. She thought that a 180-day sentence is a significant sentence and is the kind of sentence that might replace a prison sentence; whereas a judge might think that 90 days is not sufficient.

She stated that she was concerned about the costs to the counties and felt that the person should be allowed to work and pay for the costs of his confinement. She noted, at the present time, the cost of confinement is not one of the things for which restitution can be made. She suggested that the committee hold this bill until they hear Senator Halligan's bill on restitution next Monday.

She offered a statement from John Maynard, Assistant Attorney General, who was not able to appear before the committee. See EXHIBIT A.

She indicated that Representative Addy will handle the bill on the House floor.

There were no further proponents and no opponents. SENATOR ECK closed.

REPRESENTATIVE EUDAILY noted that the effective date was on passage and approval and wondered about this. SENATOR ECK replied that it was just drafted that way and she did not know what difference it made. She said that knowing that this is a bill that would affect a lot of attorneys around the state and knowing how late we usually are in getting the additions to the codes printed, that it should be left as July.

REPRESENTATIVE BERGENE said that there was a bill about fraudulent checks; that they are going to try to reinsert the language in that bill in conference committee to say "shall not exceed $500.00". She wondered if there would be any conflict with this bill. SENATOR ECK replied that she did not think so.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 388

SENATOR BLAYLOCK, District 35, said that this bill is a follow-up on SB 326, which is now on its way to the ballot and provides that the Supreme Court may discipline a judge who violates the judicial canons of ethics. This bill as amended, revises the law concerning action taken by the judicial standards commission in the event of judicial misconduct. He said the way the bill was drafted was that the commission could act on its own motion and the Senate Judiciary Committee struck that and put in "upon the filing of a written complaint"; he accepted that and felt it was a good addition.

STEVE BROWN, representing the Montana Judges Association, stated that the language in the bill was recommended by Judge Martin, who is the chairman of the Judicial Standards Commission. He thought an interesting feature was the language on page 2, lines 14 through 17, which was the commission's recommendation that if there is an indication there might be a problem, that the judicial officer may file with the commission a letter stating that there will be corrective action taken, and that will end it.

EXECUTIVE SESSION

SENATE BILL 388

REPRESENTATIVE KEYSER moved that this bill BE CONCURRED IN. REPRESENTATIVE BERGENE seconded the motion.

REPRESENTATIVE EUDAILY moved that the bill be amended on page 2, line 17, following "action" by inserting "satisfactory to the commission". REPRESENTATIVE SPAETH seconded the motion. The motion carried unanimously.

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE BERGENE seconded the motion. The motion carried unanimously.

SENATE BILL 391

The hearing on this bill was reopened.

MAC ANDERSON, an attorney from Bozeman, who served as a part-time public defender, testified that two years ago, Senator Eck introduced something like this bill because of the inflationary pressures. He indicated that in 1907 or thereabouts the difference between a misdemeanor and a felony was $25.00; in 1973, this was raised to $150.00; and he thought that raising this to $500.00 will help the problem in district court. He said that in the last two weeks he had a case where a boy had stolen a car that was worth $200.00 - it was his first offense and he was designated as a felon.

In connection with raising the time in which a judge could sentence from 90 to 180 days in the county jail, he commented that this would give the judge the same sentencing authority that the justice of peace has, as they can sentence to 6 months in jail.

He noted that the other thing that was amended out was restitution and he testified that he was involved in a case, State vs. Morgan, where the judge required a man to pay $75.00 a month to the survivors of an automobile accident; and the Supreme Court found that restitution was proper in this case.

REPRESENTATIVE IVERSON said that last session when they were dealing with Keedy's mandatory sentencing bill, this problem

came up and he wondered when was the last time they raised this. REPRESENTATIVE SPAETH replied that he said in 1973.

MR. ANDERSON said that the original bill he drafted did not have anything about restitution in it; and he thought that when Senator Eck had this drafted by the attorney general's office, the restitution provisions were put in.

REPRESENTATIVE EUDAILY wondered what the sections were that were being repealed. MS. DESMOND replied that 46-8-114 is entitled: Time and method of payment of costs, and says when a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. She said that 46-8-115 is entitled: Effects of nonpayment of costs, which provides for what will happen when a defendant fails to pay the costs that the court ordered him to pay.

REPRESENTATIVE HANNAH asked why the last half of the bill was taken out. CHAIRMAN BROWN replied that the Senate did not like it. REPRESENTATIVE HANNAH wondered why they did not like it. CHAIRMAN BROWN replied that Senator Halligan has a bill coming over Monday that is similar on restitutions and they should be worked on together.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 371

SENATOR FULLER, District 15, Helena, said that this was a bill modifying the child custody law and gives another consideration for modifications when the child reaches 14 years of age.

SENATOR MAZUREK, District 16, Helena, said that the title of this bill is a little misleading and this applies only to a modification of an existing decree. He indicated that the court must find (1) that facts have arisen since the original decree was entered and (2) a change has occurred in the circumstances of the child or his custodian and as a result of that, modification of the prior decree is necessary to serve the best interests of the child.

arise to the worker out of any of his work done by the order of the court. He contended that there were a couple of counties - he thought Kalispell and one other - that were not willing to pay that money so they cannot assign someone to do the work.

REPRESENTATIVE FARRIS exclaimed that this was involuntary servitude.

B. LESLIE VINING, Senate Aide to Senator Eck, stated that in many of the smaller counties they do not have all these individuals to do the work and she explained the proposed amendments to the committee.

REPRESENTATIVE JENSEN commented that the last amendments refer to a bill that has already passed, which lengthens the time someone has to pay.

REPRESENTATIVE HANNAH moved the adoption of these amendments. The motion was seconded by REPRESENTATIVE CURTISS. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE KEYSER seconded the motion. The motion carried unanimously.

SENATE BILL 391

CHAIRMAN BROWN explained that the basic difference between these two bills is that this bill applies to all sentences, while Senator Halligan's bill applies to suspended or deferred sentences. He passed out amendments that were proposed for this bill. See EXHIBIT B.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE BERGENE moved that the amendments be adopted. REPRESENTED FARRIS seconded the motion.

MS. VINING explained that on page 12, lines 3 through 25, this is the original language that is in the codes now except for two areas: in subsection (ii) where it says, "jail time not exceeding 90 days" is changed to 180 days to

conform with the bill that was just passed; and subsection (v) is added, which says "payment of costs of confinement". She noted that there was also a subsection that was not included on page 12, line 19, which stated "(vii) payment of costs of court appointed counsel as provided in 46-8-113." She said that what the amendments are actually doing are retaining all of the original language in the codes with the exception of increasing jail time to 180 days and adding "payment of costs of confinement" and the rest of the bill would be deleted.

CHAIRMAN BROWN said that this basically reinserts the bottom of page 11 and all of page 12.

REPRESENTATIVE HANNAH questioned why are they doing this. MS. VINING replied that she did not know why, but Senator Eck felt that there was some language, which she and the Senate Judiciary thought was necessary, but there was not enough time to amend it; she later went through the bill; found the important parts and she thought that this should be included within this section of codes.

REPRESENTATIVE DAILY questioned on page 12, lines 22 through 25 and on page 11 if the Senate Judiciary Committee struck that language or was this the original part of the bill. MS. VINING replied that the underlining of "must and" and "shall require restitution" were the amendments that Senator Eck originally wanted put in the bill and the Senate Judiciary Committee did not feel that the "must" should be in there and so deleted the whole thing. Senator Eck felt that this was an important part of the bill and she wants to put in the original with those amendments.

CHAIRMAN BROWN said that what they basically have is the existing statute; by striking it, the Senate left the existing statute as it is on the books and what Senator Eck wants to do is just take that piece of statute that is on pages 11 and 12 and put it back in the bill and amend it as she has proposed on the sheets.

REPRESENTATIVE JENSEN asked why it was effective on passage and approval. REPRESENTATIVE KEYSER said that he had a note to change it. REPRESENTATIVE ADDY said that if they strike the effective date, it will be effective October 1.

The motion carried with REPRESENTATIVE HANNAH, REPRESENTATIVE KEYSER, REPRESENTATIVE RAMIREZ, REPRESENTATIVE CURTISS, REPRESENTATIVE DAILY and REPRESENTATIVE IVERSON voting no.

REPRESENTATIVE ADDY moved to amend the bill by striking Section 9 on page 21, lines 20 and 21, which is the effective date. REPRESENTATIVE KEYSER seconded the motion.

The motion carried unanimously.

REPRESENTATIVE EUDAILY noted that on page 21, they have struck the repealer section too and he wondered if that is what they wanted to do. He said if you don't repeal them, they are back in the statutes.

REPRESENTATIVE ADDY explained that section 46-8-114 provides the time and methods of payment of costs and 46-8-115 describes the effect of non-payment of costs and he thought that it would be consistent with the philosophy of restitution to leave those in.

CHAIRMAN BROWN said that we also do not need the codification section.

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE FARRIS seconded the motion.

REPRESENTATIVE CURTISS said that there were a lot of bad things in this bill; she believed in restitution, but this doubles the penalties; and that it makes felonies out of misdemeanors. REPRESENTATIVE ADDY replied that it does the opposite - if you stole $300.00 today, you would be guilty of a felony and if you pass this bill, you will be guilty of a misdemeanor.

REPRESENTATIVE RAMIREZ said that he would like to speak against this bill, too; because he thought $150.00 should be changed as the dividing line between misdemeanors and

felonies, but he did not like $500.00. He continued that they could steal for $500.00 or less and only commit a misdemeanor things such as a television set, a microwave oven, etc., and he thought that $500.00 was extremely high and this would also be true as far as writing checks; a person could write a check for $499.00, which is quite a healthy bad check and he would be guilty of only a misdemeanor. He indicated that he could not support that high a figure.

REPRESENTATIVE ADDY asserted that what Senator Eck is trying to do with this bill is move some of the district court caseload into justice court; in doing this the maximum fine is $500.00 and the maximum confinement is 6 months and in order to speak to the high limits here, she has also inserted all these alternatives such as restitution so that justice court with the maximum fine and the maximum confinement would still do justice to the case with restitution alternatives. He thought this was the philosophy of the bill and was what Senator Eck was trying to do.

REPRESENTATIVE BERGENE said that she had a concern about the bad check as well because she wants to be sure that while they are battling to put the "shall" language back would the conference committee have any kind of conflict with this where it says "may".

REPRESENTATIVE IVERSON commented that he felt there was more to it than just a bad check problem; it seemed to him that they have removed any incentive not to steal $450.00 because chances are all that is going to happen to you is that you will have to pay it back; and those odds are pretty good.

REPRESENTATIVE FARRIS declared that it just amazed her in reading the statistics column in the Great Falls Tribune wherein somebody writes a bad check for $29.00; goes to jail for 6 weeks and has to have a bond for $250.00. She thought this would seem as though writing a bad check was the worst possible, heinous crime and she felt it was all out of proportion for a $29.00 bad check. She stated that she understood that people were not prosecuted for the first bad check.

REPRESENTATIVE SPAETH said that he thought that Senator Eck was trying to move it from the district court to the justice court system to help relieve the caseload; and in the real world, the check for $455.00 is not going to go to Deer Lodge; he is going to spend a little time in the county jail at the most. He insisted that you don't go to Deer Lodge for stealing less than $500.00; you don't get any more than what a justice court would impose except the possibility of a longer deferred imposition of sentence; and that is the only difference that you may lose or change.

REPRESENTATIVE RAMIREZ stated that he did not agree with REPRESENTATIVE SPAETH on this particular issue; some of the people out there are going to know exactly what they have done - someone who plays the system for all it is worth - and it may be that someone is not necessarily on the first offense going to go to Deer Lodge, but you certainly have some leverage. He said that if you believe at all that punishment or the potential of punishment is a deterrent, this would seem to say to him that if a misdemeanor means you can steal up to $500.00 or write a bad check for this amount and if they are just trying to get these people into justice court rather than district court, he did not feel that that is the way the criminal justice system should work.

REPRESENTATIVE ADDY asked what he thought the proper dividing line should be. REPRESENTATIVE RAMIREZ responded that whatever figure you put there is arbitrary and he did not know how long it has been at $150.00.

REPRESENTATIVE ADDY said that in 1917 it was $25.00 and it was changed to $150.00 in 1973.

REPRESENTATIVE DAILY commented that we are not talking about a nice guy here; we are talking about a guy going into somebody's house and stealing something; crime is on the increase and he thought that $150.00 is just perfect and he felt that is where they should leave it.

REPRESENTATIVE ADDY said that breaking into someone's house is burglary and they don't make that a misdemeanor.

REPRESENTATIVE JENSEN noted that it has been his experience that the toughest judges are not district judges; if you want to get a pretty stiff sentence and to be dealt with more severely is to let it be handled by the J.P. court. He thought if you consider the number of district judges they have and how they view these kind of cases vs. the number of J.Ps they have and the way they view these cases, you are going to find hard and soft in any court, but there are a lot more hard eggs than soft eggs in the J.P. court.

REPRESENTATIVE FARRIS wondered if punishment really deters people from committing crimes; she thought that somebody who is committing burglary is not thinking too far ahead and they don't think they are going to get caught so they did not think the punishment was going to affect them anyway. She continued that she supposed there are some people out there who do evaluate whether they can write a check for $499.00, but she thought they were few and far between compared to the person who writes a bad check because they do not have any money until pay day and they think they need some goods or services.

REPRESENTATIVE SPAETH commented that that is something else about a J.P. court - it is easier to get convicted and it is easier to get a trial - and he felt that you rarely see the inside of a district court on these kind of deals anyway; and it is a different world in a J.P. court.

REPRESENTATIVE ADDY wondered at what dollar amount would the judge take the case seriously; a J.P. may look at a $400.00 case as a very serious matter; a district court judge may look at a $200.00 case as a waste of his time and a big pain. He mentioned raising the amount to $300.00, but stated that if you reduce the increase too much, there will not be many cases moved from district court to justice court. He thought that $500.00 was a fairly good dividing line between what a district judge would take seriously and what a J.P. would take seriously. He continued that he is glad that they have some bills in the legislature that addresse restitution and he felt that too often society has thought retribution for the sake of society and has not thought restitution for the sake of the victim.

REPRESENTATIVE KEYSER said that if you take pressure off the district court, you put pressure on the J.P. court

and he felt that many of the J.P. courts are filled more than the district courts and this will undoubtedly add to the J.P. courts; some of them are loaded far more than they want them to be loaded and they may be coming in for extra J.Ps.

REPRESENTATIVE IVERSON said that he liked the bill, but he has trouble with the $500.00 figure. He moved that the bill be amended on page 2, line 20, by inserting $300 in lieu of $500 and throughout the bill where it is appropriate. REPRESENTATIVE ADDY seconded the motion.

The motion carried with REPRESENTATIVE BERGENE, REPRESENTATIVE DAILY and REPRESENTATIVE HANNAH voting no.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE DAILY questioned on page 11, Section 9, which is existing law, if they killed this bill or tabled this bill, would all that language still be in the law. REPRESENTATIVE ADDY replied that that is right.

REPRESENTATIVE DAILY asked if the only thing the bill does is change the amount from $150.00 to $300.00, changes the 90 to 180 days and adds that section (v). REPRESENTATIVE ADDY responded in the affirmative.

The motion carried with 11 voting aye and 7 voting no. See ROLL CALL VOTE.

SENATE BILL 138

REPRESENTATIVE J. BROWN moved that the bill BE CONCURRED IN. REPRESENTATIVE DAILY seconded the motion.

CHAIRMAN BROWN noted that he checked the language on page 4 that he was concerned about and there is no problem with it.

REPRESENTATIVE HANNAH stated that he could not support the bill because most bills they get are single titled, single purposed and they get a chance to review that and a chance to talk about the pros and cons, they get a chance to hear

STANDING COMMITTEE REPORT

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MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 391

Third reading copy (blue color)

"AN ACT TO GENERALLY REVISE CRIMINAL PENALTIES; INCREASING THE DOLLAR AMOUNT REQUIRED TO BE INVOLVED IN A CRIME BEFORE PENALTIES FOR THAT CRIME ARE INCREASED; ~~PROVIDING FOR REIMBURSEMENT TO THE COUNTIES OF CERTAIN COSTS OF CONFINEMENT; REQUIRING MANDATORY RESTITUTION; PAYMENT OF COSTS OF COURT-APPOINTED COUNSEL; AND REPAYMENT OF CERTAIN COSTS OF CONFINEMENT REIMBURSED BY THE STATE TO THE COUNTIES;~~ AMENDING SECTIONS 45-6-101, 45-6-301, 45-6-309, 45-6-311, 45-6-316, 45-6-317, 45-6-325, AND 45-7-210, ~~46-8-112, 46-8-113, AND 46-18-201~~ MCA; ~~REPEALING SECTIONS 46-8-114 AND 46-8-115, MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That SENATE Bill No. 391

Be amended as follows:

1. Title, line 7.
Following: "INCREASED"
Insert: "INCREASING TO 180 DAYS THE TIME PERIOD THE COURT MAY ORDER THE DEFENDANT TO BE CONFINED IN JAIL AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE; PROVIDING THAT AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE, THE COURT MAY ORDER THE DEFENDANT TO PAY THE COST OF SUCH CONFINEMENT;"

2. Title, line 13.
Following: "45-7-210,"
Insert: "46-18-201,"

3. Title, line 13.
Strike: ";" and through "DATE" on line 15.

XXXXXX
DO PASS

DAVE BROWN
Chairman.

COMMITTEE SECRETARY

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4. Page 2, line 20.
Strike: "$500"
Insert: "$300"

5. Page 4, line 19.
Strike: "$500"
Insert: "$300"

6. Page 4, line 22.
Strike: "$500"
Insert: "$300"

7. Page 6, line 3.
Strike: "$500"
Insert: "$300"

8. Page 6, line 7.
Strike: "$500"
Insert: "$300"

9. Page 7, line 1.
Strike: "$500"
Insert: "$300"

10. Page 7, line 5.
Strike: "$500"
Insert: "300"

11. Page 8, line 4.
Strike: "$500"
Insert: "300"

12. Page 9, line 16.
Strike: "$500"
Insert: "$300"

13. Page 10, line 25
Strike: "$500"
Insert: "$300"

14. Page 11, line 18.
Strike: "$500"
Insert: "$300"

15. Page 14, following line 10.
Insert: "Section 9. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving

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under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;
(ii) jail time not exceeding ~~90~~ 180 days;
(iii) conditions for probation;
(iv) restitution;
(v) payment of the costs of confinement;
~~(v)~~ (vi) payment of a fine as provided in 46-18-231;
~~(vi)~~ (vii) payment of costs as provided in 46-18-232 and 46-18-233;
~~(vii)~~ (viii) payment of costs of court appointed counsel as provided in 46-8-113;
~~(viii)~~ (ix) community service;
~~(ix)~~ (x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
~~(x)~~ (xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such resonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)~~(x)~~ (xi).

(c) impose a fine as provided by law for the offense;
(d) require payment of costs as provided in 46-18-232 or payment of costs of court appointed counsel as provided in 46-8-113;
(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;
(f) impose any combination of subsection (1)(b) through (1)(e).

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(4) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

DAVE BROWN, Chairman.

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(5) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended."

16. Page 21, lines 20 and 21.
Strike: Section 9 in its entirety.

AND AS AMENDED
BE CONCURRED IN

DAVE BROWN, Chairman.

STATE PUB. CO.
Helena, Mont.